CV 08 3257

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 12 2008 ★

DANIEL RAD,
Plaintiff,

-against-

COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT, NASSAU COUNTY DISTRICT ATTORNEY'S OFFICE, & DISTRICT ATTORNEY ANNE RICE, in her official capacity.

Defendants.

Case No.

CIVIL COMPLAINT

SPATT, J.
LINDSAY, M.

Plaintiff complains by and through his attorney as follows:

Jurisdiction

1. Plaintiff Daniel Rad brings this action against Defendants to redress the deprivation of rights secured him by the *Fourth, Fifth, Eighth, and Fourteenth* Amendments to the United States Constitution, 42 U.S.C. §§1983,1985 & 1986.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331, 1332, and 1343(a)(3), and 42 U.S.C. §1983. The matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.
3. Venue is proper in this District pursuant to 28 U.S.C. §1391 as the cause of action occurred in this District.
4. On or about November 7, 2007, Plaintiff served a Notice of Claim upon Defendants

Parties

5. At all times mentioned herein, Plaintiff was a resident of Nassau County, New York.
6. At all times mentioned herein, each Defendant was and is, upon information and belief, a citizen of New York.
7. At all times hereinafter mentioned, the Defendant County of Nassau was a body corporate and politic of the State New York operating and existing under the laws of the State of New York, and located in the County of Nassau in said State and operating and overseeing Defendant District Attorney.
8. At all times hereinafter mentioned, Defendant District Attorney is a local office and agent of Defendant County pursuant to the New York State Constitution, section 7 of article XIII of the Constitution, and operating and existing under the laws of the State of New York.
9. At all times hereinafter mentioned, Defendant District Attorney Anne Rice was in charge of operating Defendant District Attorney's Office and managing and supervising the personnel thereat. Defendant

Rice is being sued in her individual and official capacities.

10. At all times hereinafter mentioned, the Defendant Nassau County Police Department is a department operating and existing under the laws of the State of New York, and located in the County of Nassau in said State and overseen by Defendant Nassau County.

11. At the time of the alleged incident and at all times pertinent hereto, Defendants acted under color of law, of a statute, ordinance, regulation, custom, or usage in the State of New York and sometimes beyond that scope.

Facts

12. On or about August 10, 2007, Erika Goldstein, the wife of Plaintiff Rad, filed a criminal report to Defendants' Nassau County and Nassau County Police Department's 6th Precinct alleging that on or about July 2, 2007 Plaintiff took her property.

13. Ms. Goldstein worked for Defendant District Attorney as a paid employee in the summer of 2007.

14. On August 12, 2007, Plaintiff was arrested, held for over 6 hours of interrogation without food or water and refused a phone call, then arrested for felony larceny and held overnight in jail.

15. Plaintiff informed during the interrogation that he had counsel and that the property was marital.

16. Plaintiff was in custody for over 24 hours.

17. Plaintiff hired counsel as a result of the criminal charges and made multiple court appearances from August 12, 2007 to November 2, 2007.

18. On September 10, 2007, Plaintiff called Defendant Nassau County's 6th Precinct to make a criminal report of larceny against Ms. Goldstein for the theft of his 42" plasma TV, Rolex watch, diamond cufflinks and other property from his home.

19. On September 10, 2007, Defendant Nassau County's officers refused to take Plaintiff's theft report against Ms. Goldstein after discovering Plaintiff was arrested on August 12, 2007 upon Ms. Goldstein's criminal complaint.

20. On September 12, 2007, Defendant Nassau County's officers visited Plaintiff's home after Sergeant Giumenta was informed they refused to take a criminal report.

21. On September 12, 2007, Defendant Nassau County's officers limited the report to listing jewelry taken because they considered any other missing property as marital and not subject to a theft.

22. On September 12, 2007, Detective Torres confirmed to Plaintiff that he would limit the theft report to jewelry and would arrest Ms. Goldstein if she admitted to possessing the jewelry.

23. On September 24, 2007 Plaintiff provided Detective Torres a letter from Ms. Goldstein's counsel admitting Ms. Goldstein possessed Plaintiff's jewelry.

24. On September 26, 2007, Detective Torres informed that ADA Gentile in the ECAB Unit and ADA

Boyle, assigned to the Goldstein prosecution against Plaintiff, advised and directed him not to arrest Ms. Goldstein and directed Plaintiff to wait until the prosecution of Goldstein's case against him, on for October 11, 2007.

25. On November 2, 2007, Defendant District Attorney dismissed the felony charges against Plaintiff in the interests of justice pursuant to CPL §170.30(1)(f).

COUNT ONE: §1983 FOURTEENTH AMENDMENT & EQUAL RIGHTS VIOLATIONS

1. Plaintiff incorporates herein all of aforesaid paragraphs and their allegations.
2. The advice of ADAs' Gentile and Boyle to Detective Torres was not a prosecutorial function.
3. The decision not to arrest Ms. Goldstein was made not independent of Plaintiff's criminal complaint against her, but wholly dependent upon her being the accuser who filed the first criminal complaint against Plaintiff.
4. The decision not to arrest Ms. Goldstein was based upon directives of Defendant District Attorney that was prosecuting Plaintiff.
5. Defendants maintain a general policy favoring an initial complainant over a later without giving primary regard to the particular facts involved.
6. That policy bears no rational relationship to legitimate governmental interest in impartial law enforcement.
7. Plaintiff is a member of the class of persons being cross-complainant's or second complainant.
8. Defendants refused to give Plaintiff an opportunity to be heard when his property and liberty were at stake, at a meaningful time and in a meaningful manner.
9. Defendants' policy violated Plaintiff's rights under the Fourteenth Amendment, due process and the equal protection clause.

COUNT TWO: §1983 MUNICIPALITY CUSTOM VIOLATIONS

10. Plaintiff incorporates herein all of aforesaid paragraphs and their allegations.
11. Defendant Nassau has a history of promoting Defendant District Attorney's unconstitutional policies alleged herein.
12. Defendant Rice as a municipal official with final policy making authority directly committed or commanded the alleged constitutional violation.
13. Defendant Rice as a policy maker indirectly caused the misconduct of a subordinate municipal employee by acquiescing in a long-standing practice or custom which may fairly be said to represent official policy.
14. Defendant Rice as a municipal policy maker failed to adequately train subordinates, and such failure amounts to "deliberate indifference" to the rights of the individuals who interact with the Defendants'

municipal employees.

15. All Defendants failed to adequately train and supervise their police officers and employees and their failure to provide adequate training and supervision to its police officers and employees constitutes a willful and wanton indifference and deliberate disregard for human life and the rights of private citizens, including Plaintiff. Plaintiff is thus entitled to exemplary damages.

16. By reason of Defendants practices related herein, Plaintiff was injured in body and mind, was prevented from following his customary pursuit in his usual occupation, has suffered greatly in his credit and reputation, and has expended money in his defense.

COUNT THREE: §1983 FALSE IMPRISONMENT

17. Plaintiff incorporates herein all of aforesaid paragraphs and their allegations.

18. Defendants falsely imprisoned Plaintiff by arresting and confining him and Plaintiff was aware he was so confined.

19. By reason of said false imprisonment while Defendant acted under color of state or territorial law, Plaintiff was deprived of his federal rights to liberty and freedom.

DECLARATORY JUDGMENT

20. Plaintiff incorporates herein all of aforesaid paragraphs and their allegations.

21. Plaintiff requests that this Court issue a declaratory judgment, and that it declare the policies alleged herein as "first-come-first-served" of the Defendants to be unconstitutional and an injunction against said policies.

DEMAND FOR TRIAL BY JURY

22. Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiff Daniel Rad, requests the following relief:

A. A judgment against all Defendants, jointly and severally on each Cause of Action detailed herein, awarding Compensatory and Punitive Damages to the Plaintiff in an amount to be determined by a Jury and/or the Court.

B. A judgment against Policy Making Defendants in an amount to be determined at trial.

C. A declaratory judgment with injunctive relief against Defendants declaring their policy, practice and custom of "first-come-first-served" is unconstitutional.

D. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. s 1988 and Fed. R.Civ.P. 23 and

E. such other and further relief as the court may deem appropriate.

Dated: New York, New York
August 9, 2008

Law Offices of Susan Chana Lask
/s Susan Chana Lask

BY: **Susan Chana Lask, Esq./SCL1744**
Attorney for Plaintiff
244 Fifth Avenue, Suite 2369
New York, NY 10001
212.358-5762